INNO-WANGSA OILS & FATS SDN BHD
v. RAKSAM INGRIDIENTS PRIVATE LTD

COURT OF APPEAL, PUTRAJAYA
AZMI ARIFFIN JCA
MOHD FIRUZ JAFFRIL JCA
ONG CHEE KWAN JCA
[CONSTRUCTION APPEAL NO: N-02(IM)(C)-412-03-2025]
4 NOVEMBER 2025

Abstract – *A failure to include material and mandatory cause papers crucial to an appeal in its record of appeal is a serious breach of r. 18(4)(a) and (c) of the Rules of the Court of Appeal 1994 and the Court of Appeal Practice Direction No 1 of 2017. Such non-compliance can cause serious prejudice or a substantial miscarriage of justice.*

CIVIL PROCEDURE: *Striking out – Record and notice of appeal – Omission of documents relevant to appeal – Whether non-compliance occasioned serious prejudice or substantial miscarriage of justice – Rules of the Court of Appeal 1994, rr. 3A, 5, 18(4)(a), (c)*

By a notice of motion (encl. 6), the respondent filed an application to the High Court to strike out the whole of the appellant's record of appeal and the notice of appeal on the ground that, *inter alia*, the appellant had omitted several papers relevant to the appeal in its record of appeal and had therefore failed to comply with the requirements of the Court of Appeal Practice Direction No. 1 of 2017. The appeal was filed by the appellant who was dissatisfied with the decision of the High Court in striking out its originating summons dated 8 November 2024 (High Court – encl. 1). This same originating summons had been wilfully omitted from the record of appeal by the appellant. The issue that arose was whether such non-compliance had occasioned serious prejudice or substantial miscarriage of justice.

Held (allowing encl. 6)
Per Azmi Ariffin JCA delivering the judgment of the court:

(1) There was a serious breach of the r. 18(4)(a) and (c) of the Rules of the Court of Appeal 1994 ('RCA') and the Court of Appeal Practice Direction No. 1 of 2017, whereby the appellant had failed to include the material and mandatory cause papers that were crucial to the appeal from the record of appeal. The omission of the said material papers had caused prejudice to the respondent as the respondent was unable to take further steps to respond to the appeal including the filing of written submissions for the appeal. (paras 10 & 13)

(2) As a consequence of the appellant's omission to include the said material cause papers in the record of appeal, this court was prevented from being placed with a proper understanding of the appeal and/or to carry out its duty of doing justice to the appeal as the appeal could not be heard by way of re-hearing, as provided in r. 5(1) of the RCA. The appellant's failures amounted to abuse or contumelious disregard of the rules. The appellant had failed to rectify the defects despite opportunities being given. (paras 15-17)

(3) The supplementary record of appeal which the appellant filed, seeking to cure the defects, was filed without any application to seek leave and was only filed three days before the hearing of this appeal as a last-minute attempt to comply with the rules. In light of the above, the exemption in r. 3A of the RCA could not be used to save the appellant. The appellant should live with the consequences of its own fault. Such serious non-compliance was not curable as it caused serious prejudice and substantial miscarriage of justice to the respondent. (paras 18-21)

Case(s) referred to:
Mazni Ibrahim v. Rosaidy Effandy (Tetuan Khairil & Co) [2013] 4 CLJ 453 CA ***(refd)***

Legislation referred to:
Rules of the Court of Appeal 1994, rr. 3A, 5(1), 18(4)(a), (c)

For the appellant - Suresh Subramaniam & Azizul Hilmi Zulkifli; M/s S Suresh Law Chambers
For the respondent - Jeyashankar Sivalingam & Rajeswary Girupai; M/s Rajeswary Girupai & Assocs

Reported by Suhainah Wahiduddin

JUDGMENT

Azmi Ariffin JCA:

Introduction

[1] By a notice of motion dated 25 June 2025 (encl. 6), the respondent/defendant filed an application to the High Court Seremban to strike out the whole of the appellant/plaintiff's record of appeal and the notice of appeal.

Brief Chronology Of Events

[2] By encl. 1 dated 8 November 2024, the appellant *via* originating summons sought from the High Court Seremban the followings orders:

> 1. Award bertarikh 18/10/2023 (No. Rujukan A446) oleh Tribunal Timbangtara Persatuan Penapis Minyak Sawit Malaysia (PORAM) dan Award bertarikh 5/8/2024 (No. Rujukan: AA446) oleh Lembaga Rayuan Persatuan Penapis Minyak Sawit Malaysia (PORAM Appeal Board) dibatalkan secara keseluruhan;

2. Award bertarikh 18/10/2023 (No. Rujukan A446) oleh Tribunal Timbangtara Persatuan Penapis Minyak Sawit Malaysia (PORAM) dan Award bertarikh 5/8/2024 (No. Rujukan: AA446) oleh Lembaga Rayuan Persatuan Penapis Minyak Sawit Malaysia (PORAM Appeal Board) digantung pengiktirafan dan perlaksanaannya sehingga pelupusan perenggan (1) di atas;

3. Kos tindakan ini menjadi kos dalam kausa;

4. Relif-Relif lain yang Mahkamah Yang Mulia ini anggap wajar dan suai manfaat.

[3] On 6 December 2024, the respondent filed a notice of application (encl. 5) and sought the following orders:

(a) Saman Pemula Plaintif bertarikh 8/11/2024 (Lampiran 1) yang diserahkan kepada Defendan adalah tidak sah;

(b) Afidavit Sokongan Plaintif yang diikrarkan oleh Ratnakrishnan a/l Ponnusamy pada 8/11/2024 (Lampiran 2) dan diserahkan kepada Defendan adalah tidak sah;

(c) Saman Pemula Plaintif bertarikh 8/11/2024 (Lampiran 1 dibatalkan);

(d) Afidavit Sokongan Plaintif yang diikrarkan oleh Ratnakrishnan a/l Ponnusamy pada 8/11/2024 (Lampiran 2) dibatalkan;

(e) Kos permohonan ini dan kos sampingannya ditanggung oleh Plaintif; dan

(f) Lain-lain perintah dan/atau relief yang difikirkan adil dan suai manfaat oleh Mahkamah Yang Mulia ini.

[4] After the respondent filed its application at encl. 5 to strike out encl. 1, the plaintiff then filed two applications, *ie*, encl. 7 dated 20 December 2024 and encl. 19 dated 24 January 2025 to amend its originating summons.

[5] However, on 5 March 2025, the learned Judicial Commissioner allowed the respondent's notice of application in encl. 5 and struck out the appellant's originating summons in encl. 1 with costs of RM3,000 based on the following reasons:

Analisis dan Penemuan Mahkamah

[7] Di dalam kes ini, Mahkamah mendapati bahawa Plaintif telah gagal untuk memplidkan secara spesifik pada bahagian Intitulement di bawah peruntukkan Sub-Seksyen yang mana satu, Seksyen 37 Akta Timbang Tara 2005 yang berkenaan dan/atau yang relevan dan/atau yang terpakai oleh Plaintif di dalam tindakan Saman Pemula Plaintif terhadap Defendan di bawah Lampiran - 1 ini. Oleh itu, tindakan Saman Pemula Plaintif ini adalah tidak berasas dan tidak boleh dipertahankan serta harus dibatalkan kerana gagal mematuhi syarat-syarat statutori yang diperuntukkan di bawah Seksyen 37 Akta Timbang Tara 2005 ini.

A [8] Seterusnya, Mahkamah juga mendapati bahawa Afidavit Sokongan Plaintif di bawah Lampiran - 2 ini telah gagal untuk mematuhi syarat-syarat yang diperuntukkan di bawah Aturan 69 Kaedah 4 dan Kaedah 5 Kaedah-Kaedah Mahkamah 2012, oleh kerana isi kandungannya adalah hanya merupakan sekadar penegasan Plaintif semata-mata tanpa merujuk kepada alasan-alasan undang-undang/statutori yang sah dan kandungannya
B telah diletakkan bersekali secara sekali gus, dan telah gagal untuk menyokong tindakan Saman Pemula Plaintif (Lampiran - 1).

[9] Selanjutnya, merujuk kepada peruntukkan Seksyen 37(4) Akta Timbang Tara 2005 dan Aturan 69 Kaedah 5 Kaedah-Kaedah Mahkamah 2015, ianya jelas memperuntukkan seperti berikut:

C

> Application for setting aside
>
> 37. (4) An application for setting aside may not be made after the expiry of ninety days from the date on which the party making the application had received the award or, if a request has been made under section 35, from the date on which that request had been
D disposed of by the arbitral tribunal.
>
> Application to set aside an award (O. 69, r. 5)
>
> 5. (1) Subject to subparagraph (2), an application to the Court to set aside an award under section 37 of the 2005 Act may be made:
>
> E (a) at any time within ninety days from the date on which the applicant received the award; or ...

[10] Di dalam kes ini, Mahkamah mendapati dalam perenggan 4 Afidavit Sokongan Plaintif (Lampiran - 2) untuk Saman Pemula ini, Plaintif mengakui bahawa Plaintif telah menerima Award bertarikh 5.8.2024
F (No. Rujukan: AA446) oleh Lembaga Rayuan Persatuan Penapis Minyak Sawit Malaysia (PORAM Appeal Board) melalui email pada 8.8.2024. Oleh itu, tempoh 90 hari tersebut adalah berakhir pada 6.11.2024. Manakala, tindakan Saman Pemula di (Lampiran - 1) ini hanya difailkan oleh Plaintif pada 8.11.2024.

G [11] Oleh itu, adalah jelas terbukti di dalam kes ini bahawa Plaintif telah melanggari dan juga mengingkari tempoh masa 90 hari yang telah diperuntukkan tersebut dan tindakan Saman Pemula Plaintif (Lampiran - 1) ini seharusnya ditolak dengan kos oleh Mahkamah.

[12] Selain itu, Mahkamah juga mendapati bahawa Plaintif telah memfailkan tindakan Saman Pemula (Lampiran - 1) ini di bawah kod yang
H salah iaitu kod "24C" yang berkaitan dengan kes-kes Tribunal Pembinaan. Manakala, di dalam kes ini ianya adalah melibatkan kes Timbang Tara Dagang di bawah kod "24NCC".

I

[13] Begitu juga, Mahkamah mendapati bahawa Plaintif telah tersalah menamakan Defendan pada bahagian Intitulement dalam tindakan Saman Pemula ini (Lampiran - 1) sebagai Raksam Ingridients Private Limited Limited. Sedangkan nama sebenar Defendan ini adalah Raksam Ingredients Private Limited sahaja.

[14] Tambahan juga, Mahkamah mendapati bahawa Plaintif telah tersalah memberikan ataupun menyatakan nombor pendaftaran syarikat Plaintif sebagai "993301026249 (280987-H)". Sedangkan nombor pendaftaran sebenar Plaintif adalah "1993301026249 (220987-H)" dan bukannya nombor "993301026249 (280987-H)".

Kesimpulan

[15] Oleh yang demikian, berdasarkan kepada alasan-alasan tersebut di atas, Mahkamah dengan ini mendapati bahawa tindakan Saman Pemula Plaintif terhadap Defendan di bawah Lampiran - 1 ini adalah merupakan suatu penyalahgunaan proses Mahkamah.

[16] Justeru itu, Mahkamah memutuskan untuk membenarkan Notis Permohonan Defendan di bawah Lampiran - 5 ini. Oleh itu, Saman Pemula Plaintif di bawah Lampiran - 1 dibatalkan dengan kos sebanyak RM3,000.00 dan jumlah kos ini mesti dibayar oleh Plaintif kepada Defendan tertakluk kepada bayaran fi alokatur.

[6] Being dissatisfied with the said decision, on 17 March 2025, the appellant filed a notice of appeal (encl. 1) to this Honourable Court.

[7] On 30 May 2025, the appellant filed the record of appeal (encl. 4).

[8] On 25 June 2025, the respondent filed notice of motion in encl. 6 to strike out the appellant's notice of appeal and record of appeal on the following grounds:

(i) the appellant has omitted several cause papers relevant to this appeal in its record of appeal and therefore has failed to comply with the requirements of the Court of Appeal Practice Direction No. 1 of 2017;

(ii) the appellant's solicitors have totally ignored the respondent's solicitors' comments on the omissions in the draft index to the record of appeal *via* letter dated 27 May 2025 and at the e-review session on 16 June 2025 before the learned Senior Assistant Registrar of the Court of Appeal until this day. This is prejudicial to the respondent in filing its submissions as this appeal is by way of a re-hearing;

(iii) further, the record of appeal contains documents which were not referred to by the High Court at the hearing of the respondent's striking out application on 5 February 2025, which is the subject matter of the present appeal. Despite the respondent's solicitors' objections to the inclusion of these documents *via* its letter dated 27 May 2025 and at the e-review on 16 June 2025, the appellant's solicitors have ignored the same and have taken no steps to remove these documents from the record of appeal;

A (iv) the sealed order of court dated 5 March 2025 (encl. 34 in the High Court), which is at pp. 14 to 16 in the record of appeal contains a serious typographical error/omission which renders the order invalid/unenforceable as it contradicts the draft High Court order approved by both parties before the fair order was filed by the appellant, wherein
B the number "1" has again been omitted from appellant's company number (the said error/contradiction);

(v) again, despite the respondent's solicitors informing the appellant's solicitors of this said error/contradiction *via* email dated 27 May 2025 and at the e-review on 16 June 2025, the appellant's solicitors have
C not taken any action to rectify the defective High Court order to date;

(vi) the record of appeal and the notice of appeal have been assigned the incorrect code in this Honourable Court *via* the e-filing system (EFS). We were advised that code "O2C" is misleading as code "02C", as provided in the Court of Appeal Practice Direction No. 1 of 2017, is
D used for cases involving matters before the construction tribunal, whereas the present appeal involves a commercial arbitration matter;

(vii) the High Court portion of the intitulement in the notice of appeal and in the record of appeal does not follow the intitulement of the
E appellant's originating summons (encl. 1 in the High Court). This is most prejudicial and embarrassing to the respondent as this form one of the grounds in the respondent's striking out application at the High Court;

(viii) the name of the respondent as stated in the notice of appeal and in the
F record of appeal is wrongly spelt as the name of the respondent is "Raksam Ingredients Private Limited" and not "Raksam Ingridients Private Limited";

(ix) the appellant's company number as stated in the notice of appeal and in the record of appeal is also wrong. The appellant's correct company
G number is 199301026249 (280987-H) and not (993 ...); and

(x) as a consequence of the deliberate omission and action of the appellant, the court's electronic filing system (EFS) displays the respondent's company name incorrectly as "Raksam Ingridients Private Limited" and the appellant's company number wrongly.

H

Our Decision

[9] The appeal hinges on one main issue for this court's determination, which is whether such non-compliance has occasioned serious prejudice or substantial miscarriage of justice.

I

[10] Having heard the submission and having read the cause paper, we are of the view that there was a serious breach of the r. 18(4)(a) and (c) of the Rules of the Court of Appeal 1994 and the Court of Appeal Practice Direction No. 1 of 2017 (PD-1/2017) whereby the appellant has failed to include the material and mandatory cause papers that are crucial to this appeal from the record of appeal such as:

(i) the appellant's originating summons dated 8 November 2024 (the High Court - encl. 1);

(ii) the appellant's affidavit in support dated 8 November 2024 (the High Court - encl. 2); and

(iii) the respondent's affidavit in reply dated 3 December 2025 (the High Court - encl. 4).

[11] For ease of reference, r. 18(4)(a) and (c) of the Rules of the Court of Appeal 1994 is reproduced below:

> (4) The appellant shall attach to such memorandum copies of the proceedings in the High Court, including:
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> (a) *copies of the documents in the nature of pleadings*, so far as is necessary for showing the matter decided and the nature of the appeal;
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> (c) *copies of all affidavits read and of all documents put in evidence in the High Court so far as they are material for the purposes of the appeal*, and ...
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> (emphasis added)

[12] This appeal was filed by the appellant who was dissatisfied with the decision of the High Court in striking out its originating summons dated 8 November 2024 (the High Court - encl. 1). This same originating summons has been wilfully omitted from the record of appeal by the appellant.

[13] In general, the omission or inaccuracy in the appeal records does not automatically render an appeal incompetent unless the defect is so fundamental that it prejudices the respondent or impedes the court's ability to hear the appeal. Technical non-compliance with procedural rules should not defeat a substantive appeal unless it causes real prejudice or amount to an abuse of process. In such cases, the court generally prefers to order rectification rather than to strike out.

[14] However, in the present case, the omission of the said material papers has caused prejudice to the respondent as the respondent is unable to take further steps to respond to the appeal including filing of written submissions for the appeal (which has been fixed for filing on 14 October 2025) whilst the hearing of the appeal is fixed on 11 November 2025.

[15] Further, as a consequence of the appellant's omission to include the said material cause papers in the record of appeal, this court is prevented from being placed with a proper understanding of the appeal and/or to carry out its duty of doing justice to the appeal as the appeal cannot be heard by way of re-hearing, as provided in r. 5(1) of the Rules of the Court of Appeal 1994 which reads as follows:

> Appeals to the Court shall be by way of re-hearing and shall be brought by giving notice of appeal.

[16] In short, the record of appeal is fundamentally defective.

[17] We also find that the appellant's failures amount to abuse or contumelious disregard of the rules. The appellant had failed to rectify the defects despite opportunities being given.

[18] The supplementary record of appeal which the appellant filed seeking to cure the defects was filed without any application to seek leave and was only filed three days before the hearing of this appeal as a last-minute attempt to comply with the rules.

[19] In light of the above, the exemption in r. 3A of the Rules of the Court of Appeal 1994 could not be used to save the appellant. The appellant should live with the consequences of its own fault.

[20] For completeness, we reproduce r. 3A of the Rules of the Court of Appeal 1994 which read as follows:

> 3A. Preliminary objection on the ground of non-compliance shall not be allowed
>
> A Court or Judge shall not allow any preliminary objection by any party only on the ground of noncompliance of any of these Rules unless the Court or Judge is of the opinion that such noncompliance has occasioned a substantial miscarriage of justice.

[21] In addition, such serious non-compliance is not curable as it causes serious prejudice and substantial miscarriage of justice to the respondent.

[22] In the case of *Mazni Ibrahim v. Rosaidy Effandy (Tetuan Khairil & Co)* [2013] 4 CLJ 453, the Court of Appeal through Abdul Wahab Patail JCA (as he then was) delivering the judgment of the court held as follows:

> (2) The failure to serve the draft record of appeal upon the respondent before it was filed was a fundamental threat to the reliability of the record of appeal before the appellate courts.
>
> *Without a record of appeal filed, the appeal was fundamentally defective. In the present case, the record of appeal filed in the High Court was incomplete, while the record of appeal in the present appeal suffered from the fundamental defect of the draft* not having been served upon the respondent and containing a submission which the latter denied making. Hence, it was not made possible to show where the merits and justice lay. (paras 19, 20 & 23)

[22] In principle, r. 3A is similar to O. 1A of the Rules of the High Court 1980. If there is any misconception that O. 1A, and therefore r. 3A is panacea to non-compliance with the rules of court, it has been decisively dismissed in *Duli Yang Amat Mulia Tunku Ibrahim Ismail Ibni Sultan Iskandar Al-Haj v. Datuk Captain Hamzah Mohd Noor & Another Appeal* [2009] 4 CLJ 329 FC where the Federal Court held at para. 50 of the judgment that:

> As I had mentioned in court, *if O. 1A is sought to be invoked whenever a party fails to comply with any provision of the rules, then the whole of the Rules of the High Court 1980 would be rendered useless*.
>
> (emphasis added)

Conclusion

[23] The respondent's notice of motion in encl. 6 is allowed with costs of RM5,000 to be paid by appellant to the respondent subject to allocator.